



REGULATORY ENFORCEMENT AND SANCTIONS

THE NEW REGIME.....?.....

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ROLE OF THE TRADING STANDARDS OFFICER

“The job of protecting consumers, workers and the environment must now be balanced with providing advice and support for business, so they can comply with legislation and grow in a way that increases prosperity.

All regulators should provide services that are in line with the principles of better regulation:

- transparent
- proportionate
- accountable
- consistent, and
- targeted”

— LBRO website

How did it come to this?

- The Better Regulation Task Force report
- The Hampton Report
- The Macrory Review

The Hampton Principles – regulators should.....

- Use risk assessment to concentrate resources
- Be accountable
- No inspection without a reason.
- No unnecessary information, nor give the same piece of information twice.
- provide authoritative, accessible advice easily and cheaply.
- Allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Macrory Sanctioning Principles

A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance

Macrory 7 - characteristics of Good Regulation

Regulators should:

1. Publish an enforcement policy;
2. Measure outcomes not just outputs;
3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
4. Follow-up enforcement actions where appropriate;
5. Enforce in a transparent manner;
6. Be transparent in the way in which they apply and determine administrative penalties; and
7. Avoid perverse incentives that might influence the choice of sanctioning response.

Legislation

- **Legislative and Regulatory Reform Act 2006**
 - **Regulator's Compliance Code**
- **Regulatory Enforcement and Sanctions Act 2008**
 - **The Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009**
 - **The Co-ordination of Regulatory Enforcement (Procedure for References to LBRO) Order 2009**
 - **The Co-ordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009**

The RESA

5 parts plus the Schedules.

- Part 1 (LBRO)
- Part 2 (Primary Authority)
- Part 3 (Civil Sanctions (in force but all provisions to be introduced by order-making powers))
- Part 4 (Regulatory Burdens)
- Part 5 (General)

MACRORY (in RESA)

- introducing new financial penalties as an intermediate sanction
- improving the system of statutory notices
- introducing a new type of sanction: enforceable undertakings and undertakings plus
- considering pilot schemes to gain restorative justice for regulatory non-compliance

MACRORY (Not in RESA)

- Government should review the drafting and formulation of any criminal offences relating to regulatory non-compliance
- Sanctions should be in line with the penalty principles and characteristics outlined in the review
- Criminal courts should have new powers to punish regulatory offences
- That alternative sentencing options be made available in criminal courts

MACRORY (Not in RESA)

Alternative Sentencing Proposals

- **Profit Order** – Where the profits made from regulatory non-compliance are clear, the criminal courts have access to Profit Orders, requiring the payment of such profits, distinct from any fine that the court may impose;
- **Corporate Rehabilitation Order** – In sentencing a business for regulatory non-compliance, criminal courts have on application by the prosecutor, access to a Corporate Rehabilitation Orders in addition to or in place of any fine that may be imposed; and
- **Publicity Order** – In sentencing a business for regulatory non-compliance, criminal courts have the additional power to impose a Publicity Order

Part 2 of RESA -Primary Authority Scheme

- To be run by the Local Better Regulation Office
- Available to all businesses that operate across many local authorities
- Government estimates business savings up to £48 million pa.

Section 25

- LBRO may appoint a primary authority
- Relationship can be imposed even if local authority does not agree (tho' LBRO must listen to the la's representations)
- The business and la must be consulted
- LBRO must keep a register of nominations
- Primary authority may be permitted to charge (s.31)
- LBRO can give advice, support and guidance (s.32 – 35)

Achieving consistency: Schedule 4 disputes and section 28

- A duty on the part of a local authority to notify the primary authority before taking action;
- A power on the part of the primary authority to direct the enforcing authority not to take action if it determines that the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority;
- An obligation on the enforcing authority to inform the primary authority in cases where no such direction has been given if it proposes to continue the enforcement action,
- The enforcing authority may also not bring enforcement action until a time period has elapsed, or, if a direction has been given at all.

Achieving consistency: Schedule 4 disputes

- The LBRO must consent to the resolution
- Secretary of State can disapply these procedures by Order (s.29)
- They will not apply where the enforcement action is required urgently to avoid a significant risk of serious harm to human health/ the environment/financial interests of consumers
- They will not apply where their application would be wholly disproportionate

Part 3 of RESA

The New Sanctions:-

- Fixed monetary penalties
- Discretionary requirements
- Stop Notices
- Enforcement Undertakings

Section 39 – Fixed Monetary Penalties

A power by notice to impose a fixed monetary penalty

on a person in relation to a relevant offence.

Only if “the regulator is satisfied beyond reasonable doubt that the person has committed the relevant offence”.

Fixed Monetary Penalties

“Relevant Offence” – Section 38.

The designated regulator has an enforcement function; and

The offence is contained in an Act immediately before the 21st July 2008.

Or

If the regulator is not a designated regulator, the offence is contained in an enactment in Schedule 6 in relation to which that regulator has an enforcement function.

Fixed Monetary Penalties

– Procedure

- **Service of a notice (“Notice of Intent”) – grounds, effect of payment, right to make representation and objections, circumstances where penalty may not be imposed, periods of liability and period for representations and objections.**
- **Opportunity to discharge liability by payment.**
- **Right to make written representations and objections.**
- **Final Notice.**
- **Appeal.**

Fixed Monetary Penalties

Final Notice

Grounds.

How payment may be made.

Period for payment.

Early payment discount; late payment penalties.

Rights of appeal.

Consequences of non-payment.

Fixed Monetary Penalty

No criminal proceedings if Notice of Intent served and liability discharged.

If fixed monetary penalty is imposed, there may be no conviction of the relevant offence.

Discretionary requirements – Section 41

A requirement to take such steps as a regulator may specify to secure that the offence does not continue or recur.

“Beyond reasonable doubt” requirement.

A variable money penalty in addition – not exceeding the statutory maximum.

Similar procedures as for fixed monetary penalties.

Stop Notices – Section 46.

A Notice prohibiting a person from carrying on an activity specified in the Notice until the person has taken the steps specified in the Notice.

Reasonable belief that the activity as carried on “is causing, or presents a significant risk of causing, serious harm” to human health, the environment or the financial interests of consumers.

Stop Notices

Procedure

The Notice, grounds, rights of appeal and consequences of non-compliance.

Rights of appeal.

Completion certificates.

Compensation.

Enforcement – an offence triable either way.

Enforcement Undertakings – Section 50

Acceptance of an enforcement undertaking where the regulator “has reasonable grounds to suspect that the person has committed a relevant offence”.

Specified actions in an enforcement undertaking – action to secure that the offence does not continue or recur, securing the position to restore it to what it would have been if the offence had not been committed.

Action including the payment of money to benefit any person affected by the offence, action of a prescribed description.

Consequences of compliance with an enforcement undertaking.

Provisions as to procedure, publication, variation and monitoring.

Appeals –

Appeals only to be to the First-tier Tribunal or another Tribunal created under an enactment excluding an ordinary Court of law.

Provisions suspending the requirement or notice pending appeal.

Power to determine procedures as to withdrawing the requirement or notice, confirming the requiring or notice, remitting the decision and the award of costs.

The First-tier Tribunal

The Tribunals, Courts and Enforcement Act 2007.

The First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008.

The First-tier Tribunal and Upper Tribunal (Chambers) Order 2008.

The qualification for appointment of members to the First-tier Tribunal and Upper Tribunal Order 2008.

The General Regulatory Chamber of the First-tier Tribunal

Two stages September 09 and January 10.

Charity

Consumer Credit Appeals

Estate Agents Appeals Panel

Information

Gambling Appeals

Claims Management

Immigration Services

Adjudication Panel for England